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Brief Report. Autism in the courtroom: experiences of legal professionals and the
autism community

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Abstract

Online surveys were used to sample the views of judges, barristers and solicitors (n=33) about their engagement with autistic individuals in criminal courts in England and Wales. Despite an understanding of some of the difficulties experienced by individuals with autism, and the adjustments suitable for supporting them, legal professionals reported constraints arising from a lack of understanding by others within the criminal justice system. These results are considered alongside the views and perspectives of autistic adults (n=9) and parents of children on the autism spectrum (n=19), who had encountered the criminal courts as witnesses or defendants and were largely dissatisfied with their experiences. Training, understanding and the provision of appropriate adjustments were identified as key issues by all respondent groups.

Keywords: autism; disability; equality; law; courts; barristers; solicitors; judges; criminal justice.

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Abstract

Online surveys were used to sample the views of judges, barristers and solicitors (n=33) about their engagement with autistic individuals in criminal courts in England and Wales. Despite an understanding of some of the difficulties experienced by individuals with autism, and adjustments for supporting them, legal professionals reported constraints arising from a lack of understanding of autism within the criminal justice system. These results are considered alongside the views and perspectives of autistic adults (n=9) and parents of children on the autism spectrum (n=19), who had encountered the criminal courts as witnesses or defendants, and who were largely dissatisfied with their experiences. Training, understanding and the provision of appropriate adjustments were identified as key issues by all respondent groups.

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Brief Report. Autism in the courtroom: experiences of legal professionals and the autism community

Individuals with autism spectrum disorder (henceforth, autism¹) form a vulnerable group within the criminal justice system (CJS). They are more likely to come into contact with the police and other legal professionals than the general population (e.g., Lindblad & Lainpelto, 2011; Mayes, 2003; Woodbury-Smith & Dein, 2014). It is crucial, therefore, that legal professionals understand the issues likely to hinder an autistic individual in providing best evidence at trial and identify what support and adjustments are most likely to be needed.

In recent years, researchers have begun to turn their attention to the reliability of evidence provided by autistic witnesses² within criminal proceedings (e.g., Maras & Bowler, 2014; Mattison, Dando & Ormerod, 2015). The focus, however, has been largely on the provision of evidence-in-chief; a process that occurs at police interview. Recently, Crane, Maras, Hawken, Mulcahy and Memon (2016) surveyed almost 400 police officers about their experiences of working with individuals on the autism spectrum. Findings highlighted numerous challenges faced by police officers; most notably, a perceived lack of training, organisational support, and flexibility within their roles. As a result, and despite their good intentions, police often struggled to make the adaptations needed to enable best evidence to be elicited. The current study aims to extend this earlier work by exploring the perspectives and experiences of legal professionals (specifically, judges, barristers and solicitors) who practise in criminal courts³.

¹ The term 'autistic person' is the preferred language of many adults on the spectrum (see Kenny et al., 2016). In this article, we use this term as well as person-first language (e.g., person with autism) to respect the diversity of views on this issue amongst the autism community.

² A term that includes victims, but not suspects/defendants.

³ In England and Wales, criminal courts comprise Magistrates' Courts, Crown Courts and Youth Courts. Magistrates' Courts tend to involve 'summary offences' (e.g., motoring offences, minor criminal damage) and cases are presided over by district judges (who are appointed from the ranks of barristers and solicitors) or lay magistrates (members of the community who apply to sit as magistrates); there is no jury. The most serious cases (e.g., murder, rape) are handled by Crown Courts, and comprise a jury (that determines the verdict - guilty or not guilty) and a judge (who oversees the trial and determines the sentence in the case of a guilty plea or a guilty verdict). Youth courts are a type of Magistrates' Court (with magistrates or a district judge; no jury) for defendants who are 10-17 years of age (inclusive). They deal with all offences unless the court feels the matter is so serious it

There have been several positive developments in the England and Wales aimed at improving the ability of vulnerable individuals, including those on the autism spectrum, to provide their best evidence to the court. A key development was the introduction of the Witness Intermediary Scheme in 2004 (see Cooper, 2015), which provides the option of a Registered Intermediary for vulnerable witnesses. A Registered Intermediary is an impartial, trained professional who facilitates communication between vulnerable witnesses and members of the justice system. Initial evaluations of the Witness Intermediary Scheme have been positive (Plotnikoff & Woolfson, 2015), with experimental research suggesting that intermediaries may improve the quantity and quality of evidence provided by some vulnerable witnesses at police interview (Henry, Crane, Nash, Hobson, Kirke-Smith & Wilcock, accepted). The Witness Intermediary Scheme has also been used as a model for similar schemes recently implemented in Northern Ireland (Cooper & Wurtzel, 2014) and New South Wales, Australia (Cooper, 2016). In addition, there has been interest in implementing this scheme in other countries, including Canada, New Zealand and South Africa (Henderson, 2015; Plotnikoff & Woolfson, 2015). Intermediaries are also available for defendants in the form of ‘non-registered intermediaries’: individuals who satisfy the court that they possess a skill and/or expertise that will assist in communication between the vulnerable defendant and those who may need to question them, and/or can assist the defendant to meaningfully participate in the trial (Cooper & Allely, 2016; Cooper & Wurtzel, 2013). A further critical development is the introduction of the Ground Rules Hearing (GRH), in which the court makes directions as to the questioning and treatment of the vulnerable witness or defendant. The role of the intermediary at the GRH is invaluable as it ensures that adaptations are made to enable the vulnerable individual to participate fully in the court process (Cooper, 2014; Cooper, Backen & Marchant, 2015).

needs to be referred to the Crown Court. The use of the terms judges, barristers and solicitors in this manuscript refers to specific legal roles in England and Wales. In this jurisdiction, judges preside over court proceedings, either on their own or as part of a panel; barristers are types of lawyers who generally practise as advocates in higher courts (e.g., Crown court, High Court, Court of Appeal); and solicitors (akin to attorneys) are lawyers who conduct legal proceedings and may also conduct advocacy in higher court subject to obtaining relevant qualifications.

Currently, there is very little research on the impact of such developments, or about the specific challenges legal professionals face when working with autistic individuals in England and Wales. The current, preliminary investigation addresses this gap in knowledge using an online survey methodology. A secondary aim was to supplement the views, perspectives, and experiences of legal professionals with those of members of the autism community (who have personal experience of a criminal trial either in the role of witness/defendant, or as the parent of an autistic individual involved in the CJS).

Method

Participants

Legal professionals. Respondents were recruited via advertisements circulated within legal organisations and broader social networks, including Twitter, the Advocacy Training Council, Criminal Bar Association, Law Society, Association of Prison Lawyers, Judicial College, Law Gazette, and law firms across England and Wales. Advertisements called for practising solicitors, barristers or judges, who had experience of ASD within their professional roles. A total of 33 legal professionals from England and Wales completed the survey. As can be seen in Table 1, these comprised 23 solicitors and barristers (who indicated that their practice was primarily in defence), and 10 judges (District Judges or Magistrates; not Crown Court Judges)⁴. [Although the role of barristers and solicitors may differ in England and Wales, for the purpose of this study, they all answered the questionnaire from their experiences as advocates (either for the prosecution or defence) in trials in these regions.] Legal professionals varied in their experience, but most had been in the field for more than 11 years. In addition, the sample was geographically diverse. Respondents declared professional encounters with an average of 17 individuals with ASD (range =1-100; mode =4), most of whom were young

⁴ The term 'judge' is used in this paper to encompass all those who adjudicate (that is, reach a verdict in a contested case and sentence where the defendant is found guilty or pleads guilty) in criminal cases. This is despite the sample comprising District Judges and Magistrates (who may include Lay Magistrates who, formally, are not judges).

adults. Of 28 respondents, none had encountered an autistic child aged 4 years or younger in court; 11% had encountered children aged 5-11 years; 75% 12-17 years; 86% had encountered autistic adults aged 18-24 years; 57% 25-39 years; 29% 40-64 years; and, 7% \geq 65 years.

[Table 1 about here]

ASD community. Autism community respondents were recruited through advertisements placed on ASD websites (e.g., charitable organisations), via social media (Twitter, Facebook) and by snowball sampling within the autism community. Of a broader sample of members of the autism community reporting about their experiences of the CJS (see Crane et al., 2016), nine autistic adults (8 males, 1 female) and 19 parents (18 females, 1 male; reporting on 17 males and 2 females with autism) shared their experiences of court. After confirming that there were no differences between the responses obtained from the adults and parents, these sub-samples were merged for the analyses reported in the paper. Demographic information (either self-reported or parent-reported) is presented in Table 2. The data presented in the Table (e.g., Qualifications, Employment), in addition to the fact that the adult participants could complete the survey independently, suggest we were sampling verbally and cognitively able autistic individuals.

[Table 2 about here]

Materials and Procedure

Questionnaires were administered online, via a website specifically designed for the project. The legal professionals' survey was divided into several sections:

- (1) ***About you and your professional encounters with autism.*** Respondents were asked to provide basic information about their role, including their occupational title (indicating whether they were a solicitor or barrister); whether they primarily worked for the prosecution or defence; how long they had worked in the legal profession (0-5 years; 6-10 years; 11-20 years; 21+ years); and the geographic region in which they practised. They were then asked about the nature of their

professional encounters with individuals with autism, providing: an approximate number; an estimate of the percentage of individuals encountered as a victim, witness, or suspect/defendant; an estimate of the percentage they have represented, or encountered on the opposition; an indication of the age groups they worked with (< 4 years; 5-11 years; 12-17 years; 18-24 years; 25-39 years; 40-64 years; 65+ years); and the type of offences encountered (selecting relevant options from a comprehensive list).

- (2) ***Adaptations and adjustments.*** Respondents were provided with a list of adaptations and adjustments available to autistic individuals in court (see Table 3) and were asked to indicate whether these had been implemented and, if so, whether they were helpful or unhelpful.
- (3) ***Cross-examination.*** Barristers and solicitors (not judges) were asked about their experiences of cross-examining autistic individuals: how many individuals they had cross-examined; how often they had done preparatory work prior to the cross-examination ('always'; 'sometimes'; or 'never'); who they consulted for this preparatory work (selecting relevant options from a comprehensive list); and how challenging they found the cross-examination (on a five-point scale, from 'not at all' to 'very'⁵).
- (4) ***Witness Intermediary Scheme.*** Respondents were asked to rate their knowledge of the Witness Intermediary Scheme (on a five-point scale from 'no/little' to 'excellent'). They were then asked whether they had worked with intermediaries in court, whether the intermediary's presence was helpful, and how comfortable they felt working with an intermediary (on five-point scales, from 'not at all' to 'very').

⁵ For ease of interpretation, we report the results of all five-point scales condensed into three points (e.g., 'challenging; 'neutral'; 'not challenging) throughout the Results section, as the overall patterns remained the same.

- (5) ***Knowledge and training.*** Respondents were asked to rate their knowledge of autism, and how well equipped they felt to deal with autistic individuals (on five-point scales, from ‘not at all’ to ‘very’). They were also asked whether they had received any training with regards to autism. If applicable, they were asked what the training involved (selecting relevant options from a comprehensive list) and how useful the training was (on a five-point scale from ‘not at all’ to ‘very’).
- (6) ***Recognition and disclosure.*** Respondents were asked to indicate (on three-point scales: ‘always’; ‘sometimes’; or ‘never’): the stage at which they became aware an individual was on the autism spectrum (selecting from a range of options from ‘on first contact’ to ‘during court proceedings’); and also how they became aware of the autism diagnosis (self-disclosure; parent/carer disclosure; intermediary disclosure; or clinical report).
- (7) ***Satisfaction.*** Respondents indicated how satisfied they were with their professional encounters with autistic individuals (on a five-point scale from ‘not at all’ to ‘very’).

Two separate online surveys were open to the autism community: one for autistic adults and one for parents of children with autism. These were part of broader surveys about their experiences of autism within the CJS and were split into the investigative stage (presented in Crane et al., 2016) and the court stage (presented here). Relevant questions from this aspect of the survey⁶ were:

- (1) ***About you/your child and experiences of the CJS.*** Respondents (adults/parents) were asked to provide basic demographic information, including: age; gender; diagnostic label; when the diagnosis was received (childhood or adulthood); details of any additional diagnoses; education (mainstream or special provision); highest

⁶ Whilst community respondents were also asked about the Witness Intermediary Scheme, it was not possible to analyse this data as there appeared to be confusion regarding the term; respondents interpreted this quite broadly, as a third party that acts as a mediator between people, rather than a discrete role within the justice system.

qualifications (for adults); employment status (for adults); and geographical location. They were also asked to provide an indication of the number of times they had encountered the CJS, in what capacity these encounters occurred (as a victim, witness, or suspect/defendant), the type of crime (selected from a comprehensive list), and the age at which the CJS was first encountered (< 4 years, 5-11 years, 12-17 years, 18-24 years, 25-39 years).

- (2) ***Adaptations and adjustments.*** Respondents were provided with a list of adaptations and adjustments (e.g., finding appropriate support, assistance with communication needs, questioning facilities/environment) and were asked to rate whether they were offered these and, if so, whether they were positive or negative.
- (3) ***Disclosure.*** Respondents were asked whether they disclosed their/their child's autism diagnosis (never; sometimes; received a diagnosis part-way through the investigation and did/did not disclose; diagnosed because of the investigation; always), and were asked to explain why.
- (4) ***Satisfaction.*** Respondents were asked to rate (on a series of five-point scales, from 'not at all' to 'very') whether they were (i) satisfied with any explanation of what would happen in court; (ii) how they were treated by legal professionals; (iii) the formal questioning by their own legal representation; (iv) the formal questioning by the opposing advocate; the cross-examination process; and (v) their overall experience of the CJS (including the court process).

Respondents (from all groups) were given opportunities to provide comments on their responses to the closed questions in the survey. They were also invited to provide any additional information that they wished in an open-text box at the end of the survey. These data were analysed using thematic analysis; a qualitative analytic technique that involves searching for themes or patterns within data (Braun & Clarke, 2006). To achieve meaningful patterns within the data, the six recommended stages of analysis detailed by Braun and Clarke (2006)

were followed: 1) becoming familiar with the data; 2) generating initial codes; 3) searching for themes; 4) reviewing themes; 5) defining and naming themes, and 6) producing the report.

Following Braun and Clarke (2006), data were interpreted within an essentialist framework (to report the experiences of the participants), using an inductive approach (i.e. not integrating the themes within pre-existing coding schemes, and not being influenced by the preconceptions of the researchers). Three of the authors (KM, LC and TH) independently familiarised themselves with the data, generated a list of initial codes and suggested possible themes. These authors liaised several times to review the results, resolve any discrepancies and, ultimately, decide on final themes (with input from the other authors).

Ethical approval for this study was granted by the Royal Holloway, University of London and University of Bath research ethics committees. All participants provided their informed consent before commencing the survey. In addition, respondents from the autism community were required to confirm that they were no longer experiencing distress from their experience within the CJS.

Results

Quantitative responses

Not all respondents answered every question (e.g., as some questions were not applicable to them), so responses do not always tally to the total number in the sample. Missing data were not reconstructed.

Experiences and views of legal professionals.

Professional encounters with autism. When asked to estimate the percentage of professional encounters with autistic individuals, on average, legal professionals (n =28) estimated that 13% involved the person as a victim, 7% as a witness, and 68% as a suspect/defendant. Solicitor and barrister respondents further indicated that they were representing or working with the autistic individual in around 70% of the cases, whereas in 25% of instances they had encountered the autistic person when they were appearing as the advocate

on the other side. Legal professionals in this survey reported that their most frequent encounters with autistic individuals were in relation to crimes of violence (18% of encounters with defendants; 26% of victims; 17% of witnesses), sex offences (12% of defendants; 19% of victims) and criminal damage (13% of defendants)⁷.

Adaptations and adjustments. Legal professionals were asked about their experiences of adaptations and adjustments made in court. The most commonly reported were: breaks or ‘time out’ in court; use or avoidance of particular vocabulary in questioning and steps taken to manage potential distress in questioning (Table 3).

[Table 3 about here]

Cross-examination. Solicitors and barristers were asked about their experiences of cross-examining autistic individuals. Nine reported having cross-examined at least one autistic person (mean =4.3, range =0-35). Of these, most (86%) reported carrying out preparatory work before the cross-examination including: preparing a report on their behalf (100%); consulting either a colleague who had experienced cross-examining someone with autism (17%) or an autism specialist (17%); and/or reading a learned article/professional guidance (17%). Over half (57%, of 7) reported that the cross-examination of an autistic individual was challenging (43% neutral).

Witness Intermediary Scheme. In their experience of autism in court, most respondents (76%, of 21 solicitors, barristers and judges) indicated that an intermediary had been present, and 88% (of 16) reported that the intermediary’s presence was helpful (6% unhelpful). Most legal respondents (90%, of 21) reported having some knowledge of the Witness Intermediary Scheme. Of these, 62% reported being ‘fairly knowledgeable’ or having ‘excellent knowledge’ of the scheme (19% ‘no or little knowledge’; 19% ‘neutral’). However just 38% of 16 solicitors and barristers reported feeling comfortable working with an intermediary (25% neutral; 38%

⁷ Note that these data are presented to provide an insight into the experiences (in terms of types of crime and whether the individual was a victim, witness or suspect/defendant) of the legal professionals who took part in this survey; it is not intended that these indicate prevalence regarding autism and engagement with the CJS.

uncomfortable), whereas half of the judges (out of 4) felt comfortable with an intermediary being present during court proceedings (50% neutral).

Knowledge and training. Rating their overall knowledge of autism, most (75%, of 20) legal respondents felt they were knowledgeable (5% not much knowledge; 20% neutral). The same proportion (75%, of 20) also indicated they felt well equipped and prepared to work with individuals with autism in their professional capacity (15% poorly equipped; 10% neutral). Almost a third (31%) of 22 legal professionals had received training on autism. The seven respondents who had received training indicated it had covered a wide range of topics including practical issues such as how autism impacts on everyday life (100%), behavioural features of autism (100%), communication (100%), social and emotional issues (100%), memory (86%), sensory issues (71%) and aspects of the CJS process that might be problematic for individuals with autism (57%). Most (86%) subsequently perceived the training to be useful (14% neutral).

Recognition and disclosure. Ninety-five percent of the solicitors and barristers who had represented an autistic individual (n =19) reported diagnosis was ‘always’ or ‘sometimes’ disclosed to them prior to, or during, first contact. However, 92% (of 13 respondents) reported they had also experienced instances in which the diagnosis was not disclosed to them until trial. Solicitors and barristers became aware of the diagnosis through a range of sources, including clinical reports (sometimes =92%; always =8%); parents/carers (sometimes =76%; always =18%); personal disclosure (sometimes =69%; always =13%); intermediaries (sometimes =55%) or via other channels, including solicitors themselves suspecting and requesting a diagnosis (n =2), or via another solicitor (n =2).

Satisfaction. Around half (53%, of 19 respondents) of legal professionals indicated that they were satisfied with how they had dealt with witnesses, victims or defendants in their professional capacity (16% =unsatisfied; 32% =neutral).

Experiences and views of the autism community.

Experiences of the CJS. On average, the individuals with autism (n =27) had encountered the CJS 7.04 times (range =1-25) and most had encountered the CJS as a suspect/defendant (50% =every time, 39% =sometimes, 11% =never). The crimes (or alleged crimes) they were involved with (as suspects/defendants, victims or witnesses) varied, but those most frequently reported (n =27) were violence (74%), sexual offences (33%) and criminal damage (30%).

Referring to the CJS process as a whole, individuals most frequently reported to have first given evidence between the ages of 12-17 years (52%, of 27 respondents), followed by 5-11 years (26%), 18-24 years (15%), or 25-39 years (7%), and only 8% (of 25 respondents) did not disclose their diagnosis.

Adaptations and adjustments. Respondents were asked about adaptations that were available (if any) during their appearances in court. This highlighted that few (of n =28) had received special measures: only 25% were offered screens around the witness box; 11% were able to give their evidence via live link; and 7% had the professionals remove their wigs/gowns. Moreover, 67% had a solicitor present and only one person (4%) had a meeting with the Crown Prosecution Service (the main prosecuting agency for criminal cases in England and Wales). Given a list of different aspects about the courtroom, only one adult (of n=9) highlighted something positive: that appropriate support was given. Parents (of n =15) highlighted other positive aspects, of which the top three were: appropriate support (16%); managing the time (11%); and adequate questioning facilities/environment (11%). Both parents and adults (of n =22) highlighted a number of challenges in court, most commonly: legal professionals not properly understanding the difficulties associated with autism (68%); lack of understanding of the difficulties of giving a narrative account (57%); and a lack of understanding the difficulties in remembering (43%) in this group. Unfortunately, due to the structure of the questionnaire, it was not possible to disentangle whether these adaptations were offered when the individual was a victim, witness or defendant.

Disclosure. For 36% (of n =25), their diagnosis was disclosed every time; 20% =sometimes; 24% =part-way through the investigation; and 12% =diagnosed because of the incident.

Satisfaction. Around one-third (36%, of 25 respondents) reported that they did not receive an explanation about what would happen in court. For the remainder of the sample, 19% were dissatisfied with the explanation, 50% were neutral, and 31% were satisfied. Rating how they were treated by legal professionals: 45% (of n =22) were dissatisfied and 41% were satisfied (14% neutral). Asked how satisfied they were with formal questioning in court, 58% (of n =19) were dissatisfied (21% satisfied; 21% neutral), and a further 41% (of n =22) were dissatisfied with the opposing advocate's questioning (18% satisfied; 41% neutral). Regarding satisfaction with the cross-examination, only 12% (of n =17) were satisfied and 65% were dissatisfied (24% neutral). In terms of satisfaction with the CJS overall, 70% (of n =27) of respondents from the autism community were dissatisfied and 11% were satisfied (15% neutral; 4% unsure).

Responses to open questions: Overarching themes

A thematic analysis established themes within responses to the open questions. Quotes are embedded throughout the discussion for each theme below, and additional representative quotes are presented in Table 4.

Theme 1: Lack of overall understanding. Both legal respondents and the autism community reported that legal professionals lacked awareness and understanding of autism during court proceedings. Legal professionals acknowledged that modifications needed to be made regarding training, awareness and understanding of autism, as well as the flexibility of procedures and protocols during court proceedings. Many parents indicated frustration at the legal professionals' lack of understanding of autism, reporting that those they dealt with did not grasp the seriousness and impact of the condition, or that they showed ignorance of its implications in the courtroom: *"I don't think the professionals involved understood the*

implications of my son having autism and did not appreciate just how much this increased his stress/distress with regards to the case” (Parent).

Theme 2: Variation in perceived efficacy of professionals involved in the CJS. It was evident in responses from all groups that experiences of the CJS vary widely for all parties involved. Some legal professionals emphasised that the complex nature of ASD meant that intermediaries were unable to meet the needs of individuals and could only offer limited assistance, for example surrounding the intellectual and psychological aspects of the condition. In contrast, others commented that intermediaries were helpful as they: typically had experience of ASD; could notice when autistic individuals lost concentration; and could advise regarding breaks and the use of appropriate language. The autism community also reported variable quality of CJS professionals and their treatment of autistic people, with some legal professionals demonstrating good practice and others showing poorer practice: *“We knew nothing about anything that was going on, as the adults concerned with X [name removed for anonymity] treated her as if she were not a person with ASD [autism spectrum disorder], and could cope with everything she encountered” (Parent).*

There were many examples of good knowledge and practice described by the current sample of solicitors, barristers and judges (at least by the defence): *“I take steps to minimise their distress. I take extra time to explain what will happen at each hearing, I try to find a private consultation room for them to wait. However, I find that the prosecution do not make any effort to take account of a person's ASD” (Solicitor/barrister).*

Many legal professionals noted the need for adaptations, such as breaks, changing the language of and adapting questions, removing unnecessary people from the courtroom, the involvement of intermediaries and others to support the individual, and the use of screens/live link. They also noted several autism-specific issues that may be relevant at trial, including a literal thinking style, issues with changes to routines, awareness of comorbidities and the importance of comfort items.

Theme 3: Strategies before court proceedings. All groups described measures that were sometimes taken prior to court proceedings and during the process of dealing with the CJS that improved the overall experience for all parties involved. This often required a great deal of planning, which demanded extra time; but as many professionals noted, this is a limited resource: *“My cases have gone well but mainly because I’ve had hours of conferences with them. We don’t get paid anything for conferences so it simply isn’t an option to do this for all clients that actually need it”* (Solicitor/barrister). Clear communication and detailed explanations of the process and what an individual might experience were deemed helpful by all groups, and instances where communication was inadequate or inappropriate caused added distress and complications. In particular, many from the autism community were frustrated by a lack of explanations of the processes involved in the proceedings: *“Received letter, no explanation, had to phone and ask, my son received a letter as well, he doesn’t know what is going to happen”* (Parent). Nevertheless, examples of good practice were also noted, such as practice interviews and visits to the court, which parents mentioned as particularly helpful. GRHs were also viewed as useful in most instances.

Theme 4: Strategies during court proceedings. Legal professionals described several strategies with regards to the court proceedings themselves. These included allowing individuals to sit with their parent or solicitor during questioning, wearing specific items of clothing, having regular breaks and tailoring questions and language to account for any difficulties. Legal professionals also deemed it useful for explanations of the court environment and protocols to be highlighted and described to the autistic individual (e.g., by an intermediary). These positive adjustments were not reflected by many autism community respondents, however, who expressed frustration at inadequate adjustments for their needs, and some also reported the proceedings as being unnecessarily long which heightened their distress: *“The whole process also took a staggering nine months from the date of the incident until the*

resolution of the case against the second defendant. During this time my son had to live daily with the matter hanging over him” (Parent).

[Table 4 about here]

Discussion

The current investigation explored the experiences of legal professionals (judges, barristers and solicitors), as well as the autism community (autistic adults and parents of autistic children), on the topic of autism in criminal courts. Half of the surveyed legal professionals were satisfied with their professional encounters with individuals with autism, while less than a fifth of the autism community were satisfied with their encounters with the CJS (including at court). Many from the autism community felt their legal representation was unsatisfactory, or expressed dissatisfaction with the way they were cross-examined.

Notwithstanding issues concerning the self-selecting nature of our survey respondents (i.e., advertisements specifically called for those with experience of ASD and the CJS), there was a disconnect between the autism community’s reported satisfaction (or lack of) and that of legal professionals (see also Crane et al., 2016). Regarding the steps being taken to manage the difficulties faced by autistic individuals in providing evidence, legal professionals felt they responded well to these, but this was not a view shared by the autism community. Instead, autistic people and their parents felt that few necessary adjustments were made, and poor (if any) explanations were given of what would happen in court. They also noted that a lack of understanding and appropriate support measures posed challenges to them. Both the autism community and legal respondents, however, agreed that there was a lack of support/adaptations for sensory issues, with just 20% of solicitors and barristers indicating that steps had been taken to manage the sensory needs of a person with autism in court.

Legal professionals reported that, in their experience, the most helpful adaptations and adjustments made for autistic individuals in court were the provision of breaks or ‘time out’, language and communication modifications (e.g., avoiding potentially problematic question

types such as multiple part and tag questions) and allowing the individual extra time to process questions (note: these were also the most commonly reported adaptations). Arguably, the introduction of the Witness Intermediary Scheme in England and Wales (and the use of non-registered intermediaries for vulnerable defendants) have improved the range of adjustments potentially available to autistic individuals. Despite this, few of the solicitors and barristers felt comfortable working with intermediaries. For some, this appeared to stem from a lack of familiarity with the intermediary role, supporting previous recommendations (O'Mahony 2010) that further training for CJS professionals on the role of the intermediary would be beneficial. Nevertheless, almost all (90%) legal professionals reported having knowledge of the Witness Intermediary Scheme, and the clear majority also reported the intermediary's presence in court to be helpful.

The current sample of legal respondents reported feeling more knowledgeable and better equipped to work with individuals with autism in comparison with police respondents (Crane et al., 2016) even though similar proportions (around a third) of both police and legal respondents had received training on autism. While many legal professionals demonstrated good knowledge of autism-related issues relevant to criminal proceedings, it is worth noting that this sample comprised legal professionals targeted on account of their experience of ASD, four of whom (two judges and two solicitors/barristers) noted that they were parents of autistic children. As such, this sample may have a better understanding, or a greater interest in, autism than legal professionals more broadly. Thus, the issues presented here may be an underestimation. Similarly, the autism community may have comprised those who had more extreme experiences, warranting some caution in interpreting the current findings.

It is important to note that recognition of vulnerability is a prerequisite for the provision of special measures and other support. The autism community reported that they did not always self-disclose their autism diagnosis, and legal professionals reported that they sometimes became aware of an individual's disability through other sources. Although further exploration

of the reasons for this is beyond the scope of this paper, Crane et al. (2016) reported a range of issues that precluded or encouraged individuals to disclose their diagnosis, which largely centred on their perception of CJS professionals' views, experience and knowledge of autism (see also Nicolaidis et al., 2015).

It is acknowledged that a limitation of this study is its lack of differentiation between experiences of the autism community as witnesses and defendants. Half of the autistic individuals whose experiences were reported in the paper had encountered the CJS as both a witness and a defendant, and 74% were involved with the CJS on more than one occasion. Thus, it was not possible to disentangle whether reports were based on their experiences as witnesses or defendants. Similarly, it does not take into account the favourability, or otherwise, of the outcome of the trial, from their perspective, and consequential bias. These are critical areas for future research. There was also a lack of differentiation between experiences in Magistrates', Youth and Crown Courts. Differences in the constitution and protocols between these types of criminal court mean that the findings of this study, insofar as they relate to court protocols, should be interpreted with some caution. For example, the training for those who sit in Magistrates' courts is different to the training for judges in the Crown Courts.

To conclude, the current findings add to previous research showing variable courtroom experiences for other vulnerable groups, such as children (see Bull, 2010) and those with intellectual disability (e.g., Kebbell, Hatton & Johnson, 2004). This is a very preliminary investigation and further, more systematic investigation is needed before making recommendations for changes to practice and policy. Nevertheless, the results highlight a number of issues surrounding the treatment of autistic people within the criminal justice system, and suggest that variation in legal practitioners' experience of autism may be dependent on a number of factors: 1) personal experience of the condition; 2) having conducted their own research or being 'self-taught' in the area of autism; 3) previous professional experience of dealing with or representing autistic individuals; and 4) training – of which there was a

perceived lack, and a strong demand for, by all groups. More generally, the findings suggest that legal professionals' self-efficacy in relation to autism is not reflected in the perceptions of those affected – personally or as a family member – by autism. Possible reasons for this apparent discrepancy, and potential means to eliminate it, merit further investigation.

References

- Braun, V. & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77-101. doi: 10.1191/1478088706qp063oa
- Bull, R. (2010). The investigative interviewing of children and other vulnerable witnesses: Psychological research and working/professional practice. *Legal and Criminological Psychology*, 15, 5–23. doi:10.1348/014466509X440160
- Cooper, P. (2014). *Highs and lows: the 4th intermediary survey*. Retrieved from: http://eprints.kingston.ac.uk/28868/1/Cooper_P-28868.pdf
- Cooper, P. and Wurtzel, D. (2014). Better the second time around? Department of Justice Registered Intermediaries Schemes and lessons from England and Wales. *Northern Ireland Legal Quarterly*, 65(1), 39-61
- Cooper, P. (2015). *Intermediaries: Step by Step*. London: The Advocate's Gateway
- Cooper, P. (2016). A Double First in Child Sexual Assault Cases in New South Wales: Notes from the first witness intermediary and pre-recorded cross-examination cases, *Alternative Law Journal*, 43:1 2016 191 – 194
- Cooper, P. & Allely (2016). The Curious Incident of the Man in The Bank: Procedural Fairness and a Defendant With Asperger's Syndrome. *Criminal Law and Justice Weekly*, 180, 632-634
- Cooper, P. Backen, P. & Marchant, R. (2015). Getting to Grips with Ground Rules Hearings: A Checklist for Judges, Advocates and Intermediaries to Promote the Fair Treatment of Vulnerable People in Court. *Criminal Law Review*, 6, 417-432.
- Cooper, P. & Wurtzel, D. (2013). A day late and a dollar short: in search of an intermediary scheme for vulnerable defendants in England and Wales. *Criminal Law Review*, 1, 4-22.
- Crane, L., Maras, K. L., Hawken, T., Mulcahy, S., & Memon, A. (2016). Experiences of Autism Spectrum Disorder and Policing in England and Wales: Surveying Police and

- the Autism Community. *Journal of Autism and Developmental Disorders*, 46, 2028–2041. doi:10.1007/s10803-016-2729-1
- Henderson, E. (2015). ‘A very valuable tool’: Judges, advocates and intermediaries discuss the intermediary scheme in England and Wales. *The International Journal of Evidence and Proof*, 19, 154-172.
- Henry, L.A., Crane, L., Nash, G., Hobson, Z., Kirke-Smith, M., & Wilcock, R. (accepted). Verbal, visual, and intermediary support for child witnesses with autism during investigative interviews. *Journal of Autism and Developmental Disorders*
- Kebbell, M. R., Hatton, C., & Johnson, S. D. (2004). Witnesses with intellectual disabilities in court: What questions are asked and what influence do they have? *Legal and Criminological Psychology*, 9, 23–35. doi:10.1348/135532504322776834
- Kenny, L., Hattersley, C., Molins, B., Buckley, C., Povey, C., & Pellicano, E. (2016). Which terms should be used to describe autism? Perspectives from the UK autism community. *Autism*, 20(4), 442-462. doi: 10.1177/1362361315588200
- Lindblad, F., & Lainpelto, K. (2011). Sexual abuse allegations by children with neuropsychiatric disorders. *Journal of Child Sexual Abuse*, 20(2), 182–95. doi:10.1080/10538712.2011.554339
- Maras, K. L., & Bowler, D. M. (2014). Eyewitness testimony in autism spectrum disorder: a review. *Journal of Autism and Developmental Disorders*, 44, 2682–97. doi:10.1007/s10803-012-1502-3
- Mattison, M. L. A., Dando, C. J., & Ormerod, T. C. (2015). Sketching to Remember: Episodic Free Recall Task Support for Child Witnesses and Victims with Autism Spectrum Disorder. *Journal of Autism and Developmental Disorders*, 45, 1751–1765. doi:10.1007/s10803-014-2335-z

- Mayes, T. A. (2003). Persons with autism and criminal justice: Core concepts and leading cases. *Journal of Positive Behavior Interventions*, 5(2), 92–100.
doi: 10.1177/10983007030050020401
- Nicolaidis, C., Raymaker, D. M., Ashkenazy, E., McDonald, K. E., Dern, S., Baggs, A. E., Kapp, S.K., Weiner, M., & Boisclair, W. C. (2015). “Respect the way I need to communicate with you”: Healthcare experiences of adults on the autism spectrum. *Autism*, 19, 824–31. doi:10.1177/1362361315576221
- O’Mahony, B. M. (2010). The emerging role of the registered intermediary with the vulnerable witness and offender: Facilitating communication with the police and members of the judiciary. *British Journal of Learning Disabilities*, 38, 232–237. doi:10.1111/j.1468-3156.2009.00600.x
- Plotnikoff, J., & Woolfson, R. (2015). *Intermediaries in the criminal justice system: Improving communication for vulnerable witnesses and defendants*. Bristol: Policy Press
- Woodbury-Smith, M., & Dein, K. (2014). Autism Spectrum Disorder (ASD) and Unlawful Behaviour: Where Do We Go from Here? *Journal of Autism and Developmental Disorders*, 44(11), 2734-2741. doi:10.1007/s10803-014-2216-5

Table 1.

Demographic information for legal professionals who participated in the study

Job title (n =28)	Judge (District)	14%
	Judge (Magistrate)	21%
	Solicitor	29%
	Barrister	36%
Primary area of practise (for barristers and solicitors, n =21)	Defence	81%
	Prosecution	19%
Years' experience (n =31)	0-5 years	13%
	6-10 years	16%
	11-20 years	32%
	21+ years	39%
Region (n =31)	East Midlands	3%
	London and the South East	48%
	North East	10%
	North West	23%
	South West	10%
	Yorkshire and the Humber	6%

Table 2.

Demographic information from ASD community respondents (autistic adults and parents reporting on their children with autism) who participated in the study

Diagnosis (n =28)	Asperger syndrome	71%
	Autistic Disorder	25%
	High Functioning Autism	4%
When diagnosed (n =28)	Childhood	61%
	Adulthood	39%
Additional diagnoses (n =28)	Yes	79%
	No	21%
Education (n =28)	Mainstream school	68%
	Special needs school	21%
	Specialist unit in a mainstream school	7%
	Home school	1%
Qualifications (n =9 adults)	GCSE Level (14-16 years) or equivalent	44%
	A Level (16-18 years) or equivalent	22%
	Degree (undergraduate or postgraduate)	22%
	No qualifications	11%
Employment (n =9 adults)	Not employed nor looking for work	44%
	In education (part-time)	33%
	In voluntary employment	11%
	Self-employed	11%
Region (n =28)	East Midlands	14%

	London and the South East	36%
	North East	4%
	North West	23%
	South West	7%
	Yorkshire and the Humber	11%

Table 3.

Solicitor and barrister respondents' experiences and perceptions of adaptations and adjustments made to accommodate the needs of autistic individuals in court

	% had experience of (of total n respondents)	% perceived as helpful (of total that had experienced)	% perceived as unhelpful (of total that had experienced)
Breaks or 'time out' in court	90% (20)	100% (16)	0% (16)
Use or avoidance of particular vocabulary in questioning	90% (20)	100% (19)	0% (19)
Steps taken to manage potential distress in questioning	95% (19)	84% (9)	16% (9)
Avoidance of certain question types (e.g., long-winded, multiple part, tag or negative questions)	89% (19)	100% (18)	0% (18)
Extra time to process questions	89% (18)	94% (16)	0% (16)
Steps taken to minimise effect of unexpected changes	79% (14)	64% (11)	9% (11)
Steps taken to manage engagement/focus or cooperation in interviews	75% (16)	92% (13)	8% (13)
Questioning broken down into multiple sessions	61% (18)	55% (11)	0% (11)
Video-recorded interviews as evidence-in- chief (note: not routine practice at the time the survey was live)	60% (15)	73% (11)	9% (11)
Evidence via live link	59% (17)	91% (11)	9% (11)
Removal of wigs and gowns	56% (16)	45% (11)	0% (11)
Watched Achieving Best Evidence (ABE) interview recording/ received memory refreshing prior to court	53% (15)	89% (9)	11% (9)
Ground rules hearing (GRH)	52% (21)	85% (13)	8% (13)
Court familiarisation visit	50% (18)	75% (12)	17% (12)
Screens in court	43% (14)	86% (7)	0% (7)

Communication aids or props used in court	22% (18)	83% (8)	13% (8)
Steps taken to manage sensory issues	20% (15)	50% (6)	17% (6)

Table 4.

Themes identified from responses to open questions by all respondent groups

Theme	Example quotes
<i>1. Lack of overall understanding</i>	<p>“Lack of awareness by the Court system as to how serious the difficulties can be” (Solicitor/barrister)</p> <p>“Not enough training - and trial process not amenable” (Solicitor/Barrister)</p> <p>My way of communication [and] my need for linguistic precision was not understood” (Adult)</p> <p>“There seems to be a total lack of understanding and empathy on all sides.” (Parent)</p>
<i>2. Variation in perceived efficacy of professionals involved in the CJS</i>	<p>“Depends on the intermediary - some are great others....” (Solicitor/Barrister)</p> <p>“[Breaks/time out in court] helps with focus and ensures continuous understanding of the court proceedings with individuals who can have difficulty with remaining engaged.” (Solicitor/Barrister)</p> <p>“Some solicitors are good and some bad, as you experience the CJS more you get to know good solicitors so experiences improve” (Adult)</p> <p>“We have a good team who understands and support my son” (Parent)</p>
<i>3. Strategies <u>before</u> court</i>	<p>“[Ground rules hearings] allow the parameters of questioning</p>

proceedings

to be set and assist the advocates to formulate questions which can be understood” (Solicitor/barrister)

“Excellent intermediary prepared the court and defendant.

She helped to ensure that all language used was appropriate for defendant to understand and respond to” (Judge)

“His solicitor organised a visit to the Courts then he would know where the trial was taking place and have a better understanding of the geography of the room etc.” (Parent)

4. *Strategies during court proceedings*

“Euphemisms and metaphors are difficult at best of times for witnesses. A tailored approach with guidance from an intermediary is best. Literality is an issue!”

(Solicitor/barrister)

“When the court has been extremely full we have had some people removed from the court who have not been involved in the actual case relating to the individual. We have also agreed to let an individual leave his baseball cap on” (Judge)

“He didn't have to sit in the dock he was allowed to sit at his dad's side” (Parent)
